

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Ogannaya Vincent Ofor,

Civil No. 12-2406 (PAM/SER)

Plaintiff,

v.

MEMORANDUM AND ORDER

Janet Napolitano, Secretary,
US Department of HL Security,
Eric Holder, Jr., US Attorney
General, Jeffrey J. Hawkins,
Rosemary Langley Melville,
US Department of Homeland
Security, and Sharon Dooley,
US Department of Homeland
Security,

Defendants.

This matter is before the Court on Defendants' Motion to Dismiss for failure to effect proper service. For the reasons that follow, Defendants' Motion is granted and the Complaint is dismissed without prejudice.

BACKGROUND

Plaintiff Ogonnaya Vincent Ofor filed this lawsuit in September 2012, alleging that the Department of Homeland Security, and in particular the United States Customs and Immigration Service (USCIS) has refused to allow his wife, who is a Nigerian citizen, to travel to the United States to join Ofor. In his Complaint, Ofor asked for an injunction to permit his wife to come to the United States for his cancer surgery, the date of which was not specified. He also filed a contemporaneous Motion for a Writ of Mandamus, and in

November filed a “Motion as my Good Faith Effort to resolve this issue before the Court.” Finally, he has filed a “Motion to Remove Defendant Jeffrey Hawkins and to Proceed Expeditiously to Resolve the Case.”

The Clerk’s Office received service-of-process forms from Ofor on or about October 1, 2012. However, through no fault of Ofor’s, these forms were not processed until early December (see Docket No. 14), and summonses were issued as to Defendants Dooley, Hawkins, Holder, Melville, and Napolitano on December 3, 2012. Notably, however, Ofor did not seek and has never sought the Marshal’s assistance in serving a copy of the Complaint on any other individual or entity.

Defendants have moved to dismiss the action for improper service, specifically because Ofor has failed to serve the United States Attorney’s Office for the District of Minnesota, as required by Fed. R. Civ. P. 4(i). Counsel for Defendants wrote to Ofor in late November 2012, informing him of the requirement that he serve a copy of the summons and Complaint on the United States Attorney’s Office in Minnesota. Ofor did not request Marshal’s service or attempt service in any way on the United States Attorney’s Office at that time. The instant Motion also put Ofor on notice of the requirement that he serve the United States Attorney’s Office. His response to the Motion, however, does not argue that he has ever attempted such service or that he intends to do so.

This Court has jurisdiction only to the extent allowed by law. The failure to comply with the service rules for the United States and its agencies and employees, as set forth in the Federal Rules of Civil Procedure, means that this Court does not have personal jurisdiction

over any of the Defendants. Service on the United States Attorney's Office for the District of Minnesota is a prerequisite to this Court's exercise of jurisdiction over any United States Government Defendant, and all Defendants here are officials of the United States Government. Thus, Ofor's failure to serve the United States Attorney's Office is not merely an administrative hurdle: that failure deprives this Court of jurisdiction over the Defendants.

Ofor has had sufficient time to cure this deficiency and has failed to do so or even acknowledge that he understands the requirements of the Federal Rules. The Complaint must be dismissed. The dismissal will be without prejudice, however. Should Ofor wish to press his claims again, he must ensure that he complies with all service-of-process rules.

Accordingly, **IT IS HEREBY ORDERED that:**

1. Defendants' Motion to Dismiss (Docket No. 27) is **GRANTED**;
2. All other pending Motions (Docket Nos. 3, 10, 16) are **DENIED as moot**; and
3. This matter is **DISMISSED without prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 24, 2013

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge